

Remarks

Reconsideration of this Application is respectfully requested. Claims 33-64 are pending in the application, with claims 33, 48, and 55 being the independent claims. No amendments are sought. Based on the following remarks, Applicant respectfully requests that the Examiner reconsider all outstanding rejections and that they be withdrawn.

Telephone Interview Held May 18, 2009

Applicant's representatives would like to thank the Examiner for the telephone interview held on May 18, 2009. During the interview, Applicant's representatives summarized the arguments laid out in this Reply. Although no agreement was reached regarding claim language, the Examiner requested that Applicant file this Reply detailing the arguments discussed. The Examiner is welcome to telephone Applicant's representatives to discuss any further changes which would further place the claims in condition for patentability.

Rejection under 35 U.S.C. § 103

Claims 33-64 were rejected under 35 U.S.C. § 103(a) as being allegedly obvious over U.S. Pat. No. 6,016,480 to Houvener et al. ("Houvener") in view of U.S. Pub. No. 2001/0037249 to Fitzgerald et al. ("Fitzgerald"). Applicant respectfully traverses the rejection.

1. Applicant's Remarks to Rejection in the Final Office Action

In rejecting claims 33-64 in the Final Office Action (the Office Action), the Examiner appears to restate, verbatim, the arguments of the previous Office Action of October 2, 2008. The Examiner provides new arguments on pages 11-13 of the Office Action in the section titled "Response to Arguments," which Applicant addresses herein.

Independent claims 33, 48, and 55 each recite features that distinguish over the applied references. For example, claim 33 recites "a financial transaction controller coupled to the display, wherein the financial transaction controller selectively allows the display and an input device to operate under the control of the personal device to enable personal functions other than financial transactions to be performed," claim 48 recites "wherein the financial transaction controller selectively allows the display and the input device to operate under the control of the controlling electronics to enable personal functions other than financial transactions," and claim 55 recites "wherein the financial transaction controller selectively allows the input device and the display to be coupled to the controlling electronics to enable mobile telephone calls other than financial transactions."

In the Reply to Office Action dated December 31, 2008 (the Reply to Office Action), which Arguments are summarized below, but also fully incorporated by reference herein, Applicant argued in detail how at least the above-noted claim features distinguished from Fitzgerald, noting that the Examiner did not rely on Houvener as allegedly teaching or suggesting at least the above-noted claimed features. (Reply to Office Action, p. 12).

First, Applicant noted in the Reply to Office Action that, assuming, to which Applicant does not acquiesce, a display located on the EFTPOS device of Fitzgerald is

equated to the display of claims 33, 48, and 55, Fitzgerald nowhere teaches or suggests allowing that display to be selectively under the control of either the EFTPOS device or the phone, as recited, using respective language, in claims 33, 48, and 55. The only purpose of the phone in Fitzgerald, when integrated with the EFTPOS device, is to serve as an access point to a communication network. (Fitzgerald at 0042-43).

Second, Applicant noted in the Reply to Office Action that Fitzgerald does not teach or suggest that any display on the phone is selectively under the control of the EFTPOS device, as recited, using respective language, in claims 33, 48, and 55.

Accordingly, it cannot be the case, absent the use of impermissible speculation and conjecture by the Examiner, that Fitzgerald teaches or suggests at least the above-noted distinguishing features of claims 33, 48, and 55.

2. Applicant's Remarks to Response to Argument Section in the Final Office Action

a. Applicant's Noted Distinctions Between Claims and References

In responding to the Reply to Office Action, the Examiner states in the Response to Argument section of the Office Action:

With respect to Applicant's first argument, the Examiner respectfully submitted that He relied upon the teaching of Fitzgerald (See Fitzgerald, Fig. 3, Page 2, Paragraph 0034) which correspond (sic) to Applicant's claimed feature. Therefore, Applicant's argument is not persuasive and the rejection is hereby sustained. (Office Action, p. 11).

The Examiner then states that "Applicant does not point to any specific distinction(s) between the features disclosed in the references and the features that are presently claimed." (Office Action, p. 12). Applicant respectfully submits that the

purpose of the arguments presented, for example, on page 12 of the Reply to Office Action was precisely to point to specific distinctions between the features disclosed in the references and the features that are claimed.

Not only has Applicant indicated specific distinctions, but has done so under two possible interpretations of how the Examiner's arguments could have been construed, without acquiescing to either, with regard to how Fitzgerald should be applied. The considered constructions include, for example, that a display that is being controlled is alternatively on the EFTPOS device or on the phone. The Examiner has not provided further guidance in indicating which interpretation was intended. Nevertheless, Applicant has distinguished the instant claims over both interpretations, without acquiescing to either interpretation, and therefore the Examiner has failed to establish a *prima facie* case of obviousness.

The guidance the Examiner provides on where to locate a teaching or suggestion in Fitzgerald regarding at least the above-noted distinguishing features of claims 33, 48, and 55 is FIG. 3 and paragraph 0034 of Fitzgerald. FIG. 3 is a diagram of the EFTPOS device, which has a display, element 12. Paragraph 0034 of Fitzgerald merely details the hardware elements of the EFTPOS device. Applicant find it difficult to determine, based on this broad statement by the Examiner, the underlying reasoning behind the Examiner's argument as to why these sections teach or suggest the distinguishing features of the claims.

The Federal Circuit has stated that "rejections on obviousness ***cannot be sustained with mere conclusory statements***; instead, there must be some ***articulated reasoning with some rational underpinning*** to support the legal conclusion of

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obviousness.” (M.P.E.P. § 2142 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (quoted with approval in *KSR v. Teleflex*, 550 U.S. 398 (2007)))). The Examiner has provided no such articulated reasoning, instead restating the previous rejection without any further guidance regarding how the subject matter of FIG. 3 and paragraph [0034] allegedly suggest at least the above-noted distinguishing features of claims 33, 48, and 55. Also, the Examiner does not appear to have considered in detail, nor addressed in detail, the Applicant’s arguments in the Reply to Office Action, which clearly articulated how the claims distinguish from the applied references.

b. The Examiner’s Improper Unarticulated Reliance on Alleged Suggestions Within the References

Throughout pages 11-13 of the Office Action, the Examiner improperly, and without further articulation, appears to indicate the rejection relies on what is being suggested by, rather than explicitly taught by, the applied references.

For example, the Examiner states that he has “satisfied the burden of presenting a *prima facie* case of obviousness, since he has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and motivations for combinations ***that fairly suggest*** Applicant’s claimed invention.” (Office Action, p. 12) (emphasis added).

Also, for example, the Examiner states:

The Examiner is concerned that Applicant apparently ignores the mandate of the numerous court decisions supporting the position given above. The issue of obviousness is ... by what [the references] ***would reasonably suggest*** to one of ordinary skill in the art... . (Office Action, p. 13) (emphasis added).

The Examiner’s submission that “[t]he issue of obviousness is not determined by what the references expressly state but ***by what they would reasonably suggest*** to one of

ordinary skill in the art,” is improper, as the Examiner has failed to provide the *KSR* required “articulated reasoning with some rational underpinning” as to what exactly those *suggestions* might be, relying instead on the improper, under *KSR*, “mere conclusory statements” that perceived *suggestions*, as interpreted, but not articulated by the Examiner, meet the claims. As noted, the entirety of the Examiner’s case regarding the aforementioned claim feature is what the Examiner abstractly implies is suggested by FIG. 3 and paragraph [0034] of Fitzgerald. However, it is the Examiner that bears the initial burden of *factually supporting* any *prima facie* conclusion of obviousness, failing which, “the applicant is under no obligation to submit evidence of nonobviousness.” (M.P.E.P. § 2142).

As a consequence of the Examiner not properly articulating the reasoning behind the suggestions of where the applied references should be interpreted as teaching at least the above noted distinguishing features, Applicant is provided no venue by which to advance prosecution, either through amendment, argument, or presentation of evidence.

3. Conclusions

As the Examiner has failed to establish a *prima facie* case of obviousness of claims 33, 48, and 55, the rejection should be withdrawn. Claims 34-47, 49-54, and 56-64 are also not rendered obvious by the combination of Houvener and Fitzgerald for at least the same reasons as claims 33, 48, and 55, from which they respectively depend, and further in view of their own respective features. Accordingly, Applicant respectfully requests the reconsideration and withdrawal of the rejection of claims 33-64 under 35 U.S.C. § 103(a).

Improper Final Rejection

The Examiner has improperly made the instant Office Action a Final Rejection. Applicant submits that a full and fair hearing has not been received, and that a clear issue between the Applicant and the Examiner has not been developed, as the Examiner has failed to fully articulate the rejection. (M.P.E.P. § 706.07). Accordingly, Applicant respectfully requests that the finality of this rejection be withdrawn, and a new Office Action issued fully addressing the Applicant's arguments.

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ANDREW JAMIESON

Appl. No. 10/516,445

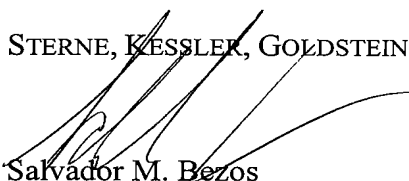
Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.


Salvador M. Bezos
Attorney for Applicant
Registration No. 60,889

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1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600
954652_2.DOC